

\$150,000 equals one and, thus, an inclusion ratio of zero. The balance of the allocation, \$20,000 (\$150,000 less the timely allocation of \$40,000 less the late allocation of \$90,000) is void.

*Example 4. Undisclosed transfer.* (i) The facts are the same as in Example 3, except that on February 1, 1998 (when the value of the trust is \$150,000), T transfers an additional \$50,000 to the trust and the value of the entire trust corpus on April 15, 1998 is \$220,000. The Form 709 filed on April 15, 1998 does not disclose the 1998 transfer. Under the rule in § 26.2632-1(b)(2)(ii), the allocation is effective first as a timely allocation to the 1997 transfer; second, as a late allocation to the trust as of April 15, 1998; and, finally as a timely allocation to the February 1, 1998 transfer. As of April 15, 1998, \$55,000, a pro rata portion of the trust assets, is considered to be the property transferred to the trust on February 1, 1998 ( $(\$50,000/\$200,000) \times \$220,000$ ). The balance of the trust, \$165,000, represents prior transfers to the trust.

(ii) As in EXAMPLE 3, the allocation is a timely allocation as to the 1997 transfer (and the applicable fraction as of July 1, 1997 is .40) and a late allocation as of 1998. The amount of the late allocation is \$99,000, computed as follows:  $(.40 \times \$165,000 \text{ plus } \$99,000)/\$165,000 = \text{one}$ .

(iii) The balance of the allocation, \$11,000 (\$150,000 less the timely allocation of \$40,000 less the late allocation of \$99,000) is a timely allocation as of February 1, 1998. The applicable fraction with respect to the trust, as of February 1, 1998, is .355, computed as follows:  $\$60,000$  (the nontax portion of the trust immediately prior to the February 1, 1998 transfer  $(.40 \times \$150,000)$ ) plus \$11,000 (the amount of the timely allocation to the 1998 transfer)/\$200,000 (the value of the trust on February 1, 1998, after the transfer on that date) =  $\$71,000/\$200,000 = .355$ .

(iv) The applicable fraction with respect to the trust, as of April 15, 1998, is .805 computed as follows:  $\$78,100$  (the nontax portion immediately prior to the allocation  $(.355 \times \$220,000)$ ) plus \$99,000 (the amount of the late allocation)/\$220,000 =  $\$177,100/\$220,000 = .805$ .

*Example 5. Redetermination of inclusion ratio on ETIP termination.* (i) T transfers \$100,000 to an irrevocable trust. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild, GC, on the termination of T's income interest. The trustee has the power to invade trust principal for the benefit of GC during the term of T's income interest. The trust is subject to an ETIP while T holds the retained income interest. T files a timely Form 709 reporting the transfer and allocates \$100,000 of GST exemption to the trust. In year 4, when the value of the trust is \$200,000, the trustee distributes \$15,000 to GC. The distribution is a taxable distribution. Because of the exist-

ence of the ETIP, the inclusion ratio with respect to the taxable distribution is determined immediately prior to the occurrence of the GST. Thus, the inclusion ratio applicable to the year 4 GST is  $.50 (1 - (\$100,000/\$200,000))$ .

(ii) In year 5, when the value of the trust is again \$200,000, the trustee distributes another \$15,000 to GC. Because the trust is still subject to the ETIP in year 5, the inclusion ratio with respect to the year 5 GST is again computed immediately prior to the GST. In computing the new inclusion ratio, the numerator of the applicable fraction is reduced by the nontax portion of prior GSTs occurring during the ETIP. Thus, the numerator of the applicable fraction with respect to the GST in year 5 is  $\$92,500 (\$100,000 - (.50 \times \$15,000))$  and the inclusion ratio applicable with respect to the GST in year 5 is  $.537 (1 - (\$92,500/\$200,000) = .463)$ . Any additional GST exemption allocated on a timely ETIP return with respect to the GST in year 5 is effective immediately prior to the transfer.

[T.D. 8644, 60 FR 66903, Dec. 27, 1995; 61 FR 29654, June 12, 1996]

#### § 26.2642-5 Finality of inclusion ratio.

(a) *Direct skips.* The inclusion ratio applicable to a direct skip becomes final when no additional GST tax (including additional GST tax payable as a result of a cessation, etc. of qualified use under section 2032A(c)) may be assessed with respect to the direct skip.

(b) *Other GSTs.* With respect to taxable distributions and taxable terminations, the inclusion ratio for a trust becomes final, on the later of—

(1) The expiration of the period for assessment with respect to the first GST tax return filed using that inclusion ratio (unless the trust is subject to an election under section 2032A in which case the applicable date under this subsection is the expiration of the period of assessment of any additional GST tax due as a result of a cessation, etc. of qualified use under section 2032A); or

(2) The expiration of the period for assessment of Federal estate tax with respect to the estate of the transferor. For purposes of this paragraph (b)(2), if an estate tax return is not required to be filed, the period for assessment is determined as if a return were required to be filed and as if the return were

## § 26.2652-1

## 26 CFR Ch. I (4-1-02 Edition)

timely filed within the period prescribed by section 6075(a).

[T.D. 8644, 60 FR 66903, Dec. 27, 1995, as amended at 61 FR 43656, Aug. 26, 1996]

### § 26.2652-1 Transferor defined; other definitions.

(a) *Transferor defined*—(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, the individual with respect to whom property was most recently subject to Federal estate or gift tax is the transferor of that property for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be a transferor even though there is no transfer of property under local law at the time the Federal estate or gift tax applies. For purposes of this paragraph, a surviving spouse is the transferor of a qualified domestic trust created by the deceased spouse that is included in the surviving spouse's gross estate, provided the trust is not subject to the election described in § 26.2652-2 (reverse QTIP election). A surviving spouse is also the transferor of a qualified domestic trust created by the surviving spouse pursuant to section 2056(d)(2)(B).

(2) *Transfers subject to Federal estate or gift tax.* For purposes of this chapter, a transfer is subject to Federal gift tax if a gift tax is imposed under section 2501(a) (without regard to exemptions, exclusions, deductions, and credits). A transfer is subject to Federal estate tax if the value of the property is includible in the decedent's gross estate as determined under section 2031 or section 2103.

(3) *Special rule for certain QTIP trusts.* Solely for purposes of chapter 13, if a transferor of qualified terminable interest property (QTIP) elects under § 26.2652-2(a) to treat the property as if the QTIP election had not been made (reverse QTIP election), the identity of the transferor of the property is determined without regard to the application of sections 2044, 2207A, and 2519.

(4) *Split-gift transfers.* In the case of a transfer with respect to which the donor's spouse makes an election under section 2513 to treat the gift as made one-half by the spouse, the electing

spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513. The donor is treated as the transferor of one-half of the value of the entire property. See § 26.2632-1(c)(5) *Example 3*, regarding allocation of GST exemption with respect to split-gift transfers subject to an ETIP.

(5) *Examples.* The following examples illustrate the principles of this paragraph (a):

*Example 1. Identity of transferor.* T transfers \$100,000 to a trust for the sole benefit of T's grandchild. The transfer is subject to Federal gift tax because a gift tax is imposed under section 2501(a) (without regard to exemptions, exclusions, deductions, and credits). Thus, for purposes of chapter 13, T is the transferor of the \$100,000. It is immaterial that a portion of the transfer is excluded from the total amount of T's taxable gift by reason of section 2503(b).

*Example 2. Gift splitting and identity of transferor.* The facts are the same as in EXAMPLE 1, except T's spouse, S, consents under section 2513 to split the gift with T. For purposes of chapter 13, S and T are each treated as a transferor of \$50,000 to the trust.

*Example 3. Change of transferor on subsequent transfer tax event.* T transfers \$100,000 to a trust providing that all the net trust income is to be paid to T's spouse, S, for S's lifetime. T elects under section 2523(f) to treat the transfer as a transfer of qualified terminable interest property, and T does not make the reverse QTIP election under section 2652(a)(3). On S's death, the trust property is included in S's gross estate under section 2044. Thus, S becomes the transferor at the time of S's death.

*Example 4. Effect of transfer of an interest in trust on identity of the transferor.* T transfers \$100,000 to a trust providing that all of the net income is to be paid to T's child, C, for C's lifetime. At C's death, the trust property is to be paid to T's grandchild. C transfers the income interest to X, an unrelated party, in a transfer that is a completed transfer for Federal gift tax purposes. Because C's transfer is a transfer of a term interest in the trust that does not affect the rights of other parties with respect to the trust property, T remains the transferor with respect to the trust.

*Example 5. Effect of lapse of withdrawal right on identity of transferor.* T transfers \$10,000 to a new trust providing that the trust income is to be paid to T's child, C, for C's life and, on the death of C, the trust principal is to be paid to T's grandchild, GC. The trustee has